

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLICATION NO. 09/993,642
ATTORNEY DOCKET NO. Q67381

REMARKS

The Patent Office has acknowledged the claim to foreign priority, but did not indicate that the certified copy of Japanese Patent Application No. 370027/2000 has been received. Applicant herein encloses a copy of the stamped USPTO filing receipt indicating that the certified copy of the priority document was received by the Patent Office on November 27, 2001. Applicant respectfully requests that the Patent Office indicate receipt of the certified copy of the priority document in the next communication from the Patent Office.

Applicant thanks the Examiner for initialing the references listed on the PTO/SB/08 A & B forms submitted with the Information Disclosure Statements filed on July 30, 2003 and October 30, 2003 and returning an initialed copies of the PTO/SB/08 A & B forms, thereby confirming that the listed references have been considered.

The Patent Office objects to the language of the Abstract of the Disclosure as containing the legal phraseology used in patent claims. Applicant herein amends the Abstract of the Disclosure, and submits that the objection has been overcome.

Claims 1-6 have been examined on their merits.

Applicant herein cancels claims 1 and 3 without prejudice and/or disclaimer. The cancelled recitations from claims 1 and 3 have been added to claims 2 and 4, respectively.

Claims 2 and 4-6 are all the claims presently pending in the application.

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1. Claims 1 and 3 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Mimura (U.S. Patent No. 6,285,887). The rejection of claims 1 and 3 is now moot due to their cancellation.

2. Claims 2 and 4-6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mimura (U.S. Patent No. 6,285,887). Applicant traverses the rejection of claims 2 and 4-6 for at least the reasons discussed below.

Applicant respectfully submits that Mimura is not available as a reference and request that the Patent Office reconsider and withdraw the rejection based on Mimura in view of the following remarks.

Section 103(c) of Title 35 of the United States Code states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Since the present invention and Mimura were commonly owned at the time of the making of the present invention, Mimura is not available as prior art under § 103(c).

The inventor of the present application is Hiroshi Aoki, so the “subject matter developed by another person” requirement of 35 U.S.C. § 103(c) is fulfilled.

As indicated above in the rejection of claims 1 and 3, Mimura is only available as a reference as of its filing date under § 102(e).

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NEC Corporation is the assignee of Mimura (U.S. Patent No. 6,285,887) by virtue of an Assignment from all of the inventors thereof executed on September 9, 1999, recorded on September 15, 1999, at Reel 10257, Frame 974 and is also the assignee of the above-captioned U.S. Application No. 09/993,642 by virtue of an Assignment from all of the inventors thereof executed on November 14, 2001 and recorded on November 27, 2001 at Reel 12331, Frame 367.

The undersigned hereby represents that Mimura and the claimed invention were, at the time the invention of the instant application was made, owned or subject to an obligation of assignment to NEC Corporation.

Based on at least the foregoing reasons, Applicant submits that claims 2 and 4-6 are in condition for allowance over Mimura, and respectfully request that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 2 and 4-6.

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In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: September 16, 2005

REQUEST OF EARLY NUMBERIFICATION OF SERIAL NUMBER

Inventor: Hiroshi AOKI

Title: TRANSMISSION POWER CONTROL METHOD AND APPARATUS AND COMPUTER-RECORDABLE RECORDING MEDIUM



Atty Doc. #: Q67381 Client: YAMAKAWA INTERNATIONAL
PATENT OFFICE

Filing Date: November 27, 2001 # Pgs. Spec/Abst: 12/1 #Claims: 6

Dwg. Sheets: 2 Decl YES Prelim Amdt NO

IDS/Prior Art: NO Pr Doc: YES Asgmt: YES Fee: \$740.00/\$40.00

Checks Attached Charge to Deposit # 19-4880 Atty/Sec: JFO/sds

SERIAL NO.:

CONF NO.: